

E-Court

ARMED FORCES TRIBUNAL, REGIONAL BENCH, LUCKNOW

Original Application No. 207 of 2020

Thursday, this the 01st day of July, 2021

Hon'ble Mr. Justice Umesh Chandra Srivastava, Member (J)
Hon'ble Vice Admiral Abhay Raghunath Karve, Member (A)

No. 6807322 Ex Sepoy Badri Narayan Singh, son of Basudev Singh, resident of House No 27104, Village-Jagaateepur, Post office-Kalikabara, District-Varanasi (UP), Pincode-221403.

..... Applicant

Ld. Counsel for the: **Shri VP Pandey, Advocate**
Applicant **Shri Manoj Kumar Mishra, Advocate**
Shri DN Pandey, Advocate

Versus

1. Union of India, through the Secretary, Ministry of Defence, South Block, New Delhi-110011.
2. Chief of the Army Staff, Integrated Headquarter of the Ministry of Defence (Army), South Block, New Delhi-110011.
3. Officer-in-Charge Records, Sena Chikitsa Corps Abhilekh Karyalaya, Army Medical Corps Record Office, PIN-900450, C/O 56 APO.
4. Principal Controller of Defence Accounts (Pension), Draupadi Ghat, Allahabad-211014.

..... Respondents

Ld. Counsel for the :**Shri Shyam Singh, Advocate**
Respondents **Central Govt Counsel.**

ORDER (Oral)

1. Being aggrieved with denial of reservist pension, the applicant has filed this Original Application under Section 14 of the Armed Forces Tribunal Act, 2007, seeking the following reliefs:-:-

(i) To issue/pass an order or direction of appropriate nature to the respondents to quash/set-aside the order dated 26 June 2017 passed by respondent.

(ii) To issue/pass an order or direction of appropriate nature to the respondents providing reservist pension to the applicant from the date of discharge/transfer to reserve establishment, i.e. 11 April 1970.

(iii) To issue/pass an order or direction of appropriate nature to the respondents to pay arrears of Reservist Pension along with interest w.e.f. 11 April 1970 till date of actual payment.

(iv) To issue/pass any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

(v) Allow this application with exemplary costs.

2. Brief facts of the case are that applicant was enrolled in the Army on 27.09.1962 and after having served for 07 years, 06 months and 15 days he was transferred to reserve establishment on 11.04.1970. He was finally discharged from service on 01.12.1977 (FN) having put in 12 years, 11 months and 04 days of service. This O.A. has been filed after lapse of over 40 years for grant of reservist pension. Applicant has represented vide letter dated 12.06.2017 for grant of reservist pension but the respondents have declined his claim on 26.06.2017 on the ground that he has not completed total 15 years of colour plus reserve service for grant of reservist pension.

3. Learned counsel for the applicant submitted that after having put in 07 years, 06 months and 15 days service applicant was transferred to reserve establishment as mentioned in discharge book but he was

discharged from service before completion of 15 years of pensionable service on 01.12.1977. He further submitted that applicant was intending to serve till completion of 15 years but he was discharged from service prior to completion of pensionable service and the reason on this count has not been mentioned in the discharge book. Further contention of applicant's learned counsel is that applicant ought to have been permitted to complete his pensionable service on the ground that applicant has unblemished record of service at the time of transfer to reserve establishment.

4. Rebutting arguments of learned counsel for the applicant, respondents' learned counsel submitted that applicant is not entitled to reservist pension in terms of para 132 of Pension Regulations for the Army, 1961 (Part-I) which stipulates that 'unless otherwise provided for, the minimum qualifying colour service for earning service pension is 15 years.' He further submitted that in the instant case applicant has rendered only 12 years, 11 months and 04 days of qualifying service which makes him ineligible for grant of pension. He further submitted that since service documents related to applicant have been destroyed by burning after expiry of mandatory retention period of 25 years in terms of Para 595 of Defence Service Regulations for the Army, 1987, Volume-II (Revised Edition), and the applicant has filed the present O.A. after a considerable long time of over 40 years, therefore, the case cannot be decided in absence of requisite documents. He pleaded for dismissal of O.A.

5. We have heard learned counsel for the parties and perused pleadings placed on record.

6. It is not disputed that applicant was enrolled on 27.09.1962 and was transferred to reserve establishment on 11.04.1970 after having rendered

07 years, 06 months and 15 days of service. He was discharged from service on 01.12.1977 after completion of 12 years, 11 months and 04 days of service i.e. prior to completion of 15 years of service while in reserve. Since service documents are not available on record, we are unable to find and establish the reason of discharge prior to completion of pensionable service. Further, we find that none of the parties have brought on record whether applicant was granted service gratuity or not at the time of discharge from service.

7. We further take note that Other Ranks (Ors) of the armed forces, depending upon their terms of engagement, serve for specified number of years in 'Reserve'. The service rendered while in active service in the armed forces is called "Colour" service and that in reserve is called "Reserve" service. While the minimum "colour" service necessary to earn a service pension is 15 years, there are some ORs who have retired after completing 15 years of combined colour and reserve service. This latter category of Other Ranks are granted "Reservist Pension" in terms of Regulation 155 of Pension Regulations for the Army – 1961 (Part-I). Prior to 01.04.1968, the Other Ranks who retired after completing at least 15 years colour plus reserve service had the option to choose between "Reservist Pension" or "lump sum Gratuity" in lieu. Reservists who were discharged prior to 01.04.1968 after rendering minimum qualifying service required for grant of pension but had opted/accepted lump sum amount of gratuity at the time of release from service and have not availed benefits of rehabilitation assistance granted by the Government and also are not in receipt of any other pension, are entitled for Ex-gratia payment of Rs. 600/- per month with effect from 01.11.1997

plus dearness relief applicable from time to time in terms of Ministry of Defence letter dated 29.12.2000.

8. Additionally, on further scrutiny, though not mentioned in O.A., it also appears that present O.A. can primarily be decided based on Regulation 155 of the Pension Regulations for the Army, 1961 (Part-I) which reads as under:

“155. An OR reservist who is not in receipt of a service pension may be granted on completion of the prescribed combined colour and reserve qualifying service, of not less than 15 years, a reservist pension equal to 2/3rd of the lowest pension admissible to a sepoy, but in no case less than Rs. 375/- p.m. on his transfer to pension establishment either on completion of his terms of engagement or prematurely irrespective of the period of colour service.

9. Regulation 158 of the Pension Regulations is also relevant for disposal of the controversy involved in this matter, which is reproduced below:

“158. A reservist who is discharged on completion of his prescribed engagement but who fails to qualify for reservist's pension on account of his service, including some non-qualifying period, which has the effect of reducing the period of his qualifying service to less than fifteen years may be granted a terminal gratuity at the scale of 2/3 a month's reckonable emoluments (Pay including classification pay, if any, last drawn) for each completed year of his colour service provided he has rendered not less than 5 years qualifying service.”

10. From a conjoint reading of Regulations 132, 155 and 158 of the

Pension Regulations (supra), it comes out that an individual becomes entitled reservist pension only after he has been transferred to pension establishment after having served the armed forces for at least fifteen years (combined colour plus reserve service) but in cases where qualifying service at the credit of an individual falls short of fifteen years but is not less than five years he is entitled to terminal gratuity. The scheme of the Pension Regulations cited above, thus, runs contrary to the applicant's plea that an individual becomes entitled to reservist pension without rendering actual physical service for fifteen years because at the time of his enrollment it was stipulated that he would be liable to render seven years colour service and eight years reserve service.

11. In view of the above and the fact that applicant has not rendered total 15 years colour plus reserve service, he is not entitled to reservist pension. As far as payment of service gratuity is concerned, since service documents pertaining to applicant have been destroyed after mandatory retention period of 25 years, we are unable to establish whether it was paid or not and this O.A. cannot be decided in vacuum.

12. The O.A. is devoid of merit and is hereby **dismissed**.

13. No order as to costs.

14. Pending applications, if any, are disposed off.

(Vice Admiral Abhay Raghunath Karve)
Member (A)

Dated : 01st July, 2021
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(Justice Umesh Chandra Srivastava)
Member (J)



